IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3210 OF 2006

M/s. GMS Technologies Limited ..Petitioner.

Vs.

M/s. Kagalwala & Associates & Ors. ..Respondents.

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Mr. D.S. Purandare i/b M/s. Nityoah Suneel & Associates for the Petitioner.

Mr. S. A. Sawant i/b M/s. Shantilal & Co. for Respondent Nos.1 to 11.

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CORAM: DR. D.Y. CHANDRACHUD, J.

19th June, 2006.

P.C. :

1. The Learned Trial Judge in the Small Causes Court has passed an order referable to the provisions of Order 15-A of the Code of Civil Procedure, 1908 by directing the Petitioner to deposit the arrears of monthly compensation from August 2004 till 7th August, 2005 and to continue to deposit the monthly compensation at the contractual rate pending the disposal of the suit. Permission has been granted to the landlord to withdraw the amount.

2. It is undisputed that three agreements were executed

between the parties on 8th November, 2002. An area admeasuring 9430 sq. ft. is in the occupation of the Petitioner. The first agreement was for a leave and licence. Under the agreement of leave and licence a monthly compensation of Rs.1,13,160/- was agreed upon. Under the second agreement which was for the provision of common facilities the amount agreed upon was Rs.10/- per sq. ft. There is a dispute between the parties as to whether the common facilities as required have been provided. It is the contention of the Petitioner is that the landlord has not provided all the facilities which is disputed by the landlord. The Learned Trial Judge has passed a just and equitable order, in that, at the present stage, there is no direction for the deposit of any amount towards common facilities. The only direction that was passed is in regard to the payment of the monthly compensation of Rs.1,13,160/-. There are arrears which are due and payable.

3. Counsel appearing for the Petitioner submitted that the Petitioners have no objection to deposit future payments but that there should be no direction in regard to past arrears. There is a valid justification for requiring the Petitioners to deposit the arrears. The Petitioners are admittedly in possession of an area of 9430 sq.

ft. Hence it is just and proper that the payment of compensation which has been agreed upon between the parties is effected.

4. On behalf of the Respondent learned counsel has instructions to make a statement that in the event that at the final disposal of the suit, it is held by the Trial Court that the Petitioners herein are entitled to any set off, the Respondent shall within a period of four weeks of the final determination make good the amount subject to their rights in appeal. Statement accepted.

5. In the circumstances, there is no reason to interfere. The Petition is dismissed.

Time to deposit shall stand extended by a period of two weeks.